

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

**BECKLEY DIVISION**

ROBERTSON-CECO CORP.,

Plaintiff,

v.

CIVIL ACTION NO. 5:07-cv-00204

DIVERSIFIED ENTERPRISE, INC.,  
and ANDREW J. WHITTAKER,

Defendants.

**MEMORANDUM OPINION AND ORDER**

The Court entered judgment in this action on November 7, 2008. On May 21, 2009, the Defendants noticed their appeal of a May 6, 2009, memorandum opinion and order denying the Defendants' Motion to Set Aside Judgment [Docket 59]. The appeal does not yet appear to have been argued or submitted for decision.

On July 14, 2010, the Court vacated a portion of a September 25, 2008, order granting summary judgment against Defendant Andrew J. Whittaker ("July 14, 2010, partial vacatur order"). The Court now **ORDERS** as follows:

1. That the July 14, 2010, partial vacatur order be **MODIFIED** as set forth in paragraph 2 below, and otherwise remain in full force and effect;
2. That to the extent Defendant Whittaker's Motion for Relief from Order ("motion") [Docket 107] is construed as a qualifying motion pursuant to Federal Rule of Civil

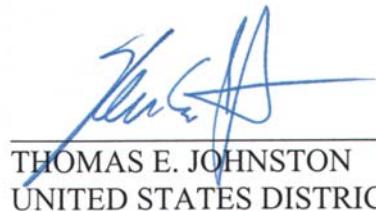
Procedure 62.1, the July 14, 2010, partial vacatur order is deemed to constitute only a statement that the Court, pursuant to Rule 62.1(a)(3), would grant the motion if the court of appeals remands for that purpose;

3. That Defendant Whittaker promptly notify the Clerk of the United States Court of Appeals for the Fourth Circuit of this memorandum opinion and order and the July 14, 2010, partial vacatur order pursuant to Rule 62.1(b) and Federal Rule of Appellate Procedure 12.1; and
4. That in the event the court of appeals enters a limited remand order in response, the July 14, 2010, partial vacatur order will be deemed to constitute an immediate, final decision on the motion without the necessity of a further order, at which time counsel are expected to discharge forthwith the obligation imposed upon them under Federal Rule of Appellate Procedure Rule 12.1(b).

**IT IS SO ORDERED.**

The Court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented party.

ENTER: July 16, 2010



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THOMAS E. JOHNSTON  
UNITED STATES DISTRICT JUDGE